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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE DELI SOURCE, INC.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 17-L-779
	)	
NATIONWIDE TRANSPORTATION, INC.,	)	
and SUB-ZERO LOGISTICS, INC.,	)	Honorable
	)	Jorge L. Ortiz,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Hutchinson and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly ruled in the: (1) carrier's favor, where it properly applied the Carmack Amendment and found that the shipper did not establish a *prima facie* case and where its findings were not against the manifest weight of the evidence; and (2) broker's favor, where it did not ignore any impact of its directed-finding rulings and where its determination that the broker owed the shipper no post-rejection contractual duty to safeguard the shipment was not against the manifest weight of the evidence. Affirmed.

¶ 2 After its cheese shipment was rejected by its customer for being above the required temperature, plaintiff, the Deli Source, Inc., sued defendants, Sub-Zero Logistics, Inc., (the carrier/trucking company), asserting carrier liability under the Carmack Amendment to the

Interstate Commerce Act (Carmack Amendment) (49 U.S.C.A. § 11707 (1994) (now codified at 49 U.S.C. § 14706 *et seq.* (2016))), and Nationwide Transportation, Inc., (the shipping broker who hired Sub-Zero), asserting breach of contract for its alleged failure to safeguard the shipment after the customer's rejection. Following a bench trial, the trial court found in defendants' favor. Deli Source appeals, arguing that: (1) the trial court's judgment in Sub-Zero's favor was against the manifest weight of the evidence, where the court misapplied the Carmack Amendment and where its findings were not based on the evidence; and (2) the judgment in Nationwide's favor was against the manifest weight of the evidence, where the court ignored the impact of its directed-finding ruling and, alternatively, where its finding that Nationwide owed Deli Source no post-rejection duty was erroneous. We affirm.

¶ 3

#### I. BACKGROUND

¶ 4 Deli Source, based in Antioch, cuts, sorts, packages, and labels deli cheeses for distribution throughout the continental United States. Nationwide is an Illinois freight shipping, freight transport, and third-party logistics-management company. Sub-Zero, based in Park City, is an interstate common carrier that moves meat and other refrigerated products.

¶ 5 Deli Source retained Nationwide as its freight broker, and John Rogan was Deli Source's primary contact at Nationwide. Deli Source and Nationwide did not have a written contract. Nationwide, for a fee, located a shipper to transport Deli Source's products to a designated location.

¶ 6 On or about May 31, 2015, Deli Source contacted Nationwide and asked it to transport, over-the-road, one load of Deli Source cheeses from Deli Source's facility in Antioch to its customer, Safeway/Dietz & Watson, in Vineland, New Jersey. Dietz & Watson agreed to pay

Deli Source \$94,256.98 for the shipment, subject to the shipment meeting the requirements of the bill of lading upon arrival in New Jersey.

¶ 7 On June 8, 2015, Sub-Zero employee/driver, Jorge Tapia, picked up the shipment. Tapia signed the bill of lading, which specified that the shipment “MUST MAINTAIN TEMPERATURE OF 33 TO 40 DEGREES” and acknowledged that “I HAVE RECEIVED THE ABOVE IN GOOD ORDER.”

¶ 8 On June 10, 2015, the shipment arrived at its destination. Dietz & Watson inspected the trailer and found that its temperature was in excess of 43 degrees, which was outside the requirement specified in the bill of lading. Also, it tested the cheese and it was in excess of 45 degrees. Dietz & Watson rejected the shipment. Tapia drove his truck to a nearby Thermo King (the refrigeration unit’s manufacturer) dealer, and diagnostic testing conducted on the unit showed that it had been properly functioning during transport.

¶ 9 On June 10 and 11, 2015, after rejection, Deli Source employees had multiple telephone calls and email communications with Rogan concerning what to do about the shipment. Deli Source had no direct communication with Sub-Zero or Tapia and relied on Rogan to communicate its directions to Sub-Zero regarding the shipment. Rogan informed Deli Source that Sub-Zero disputed Dietz & Watson’s position that the shipment failed to meet the bill of lading’s requirements. Rogan asked for the name and location of a cold-storage facility where the shipment could be stored, and Deli Source employee, Dave DeBoer, provided Rogan with the name and location of Dream Logistics in Belgium, Wisconsin. Deli Source refused to pay for the backhaul of the cheese to Illinois and did not offer to pay for storage at Dream Logistics. Tapia transported the cheese back to Illinois and parked the trailer in Sub-Zero’s lot in Park City

for four weeks with the refrigeration unit constantly running. Thereafter, the cheese was donated to a food bank.

¶ 10 On October 4, 2017, Deli Source sued defendants, alleging that the excess temperature of the trailer damaged the shipment while it was in Sub-Zero's care and possession, making it unacceptable to Dietz & Watson, its customer. It also alleged that, once the customer rejected the shipment, Deli Source maintained ownership and control over it, but that the shipment remained in Sub-Zero's physical possession. Deli Source argued that Rogan had led it to believe that he directed Sub-Zero to deliver the shipment to Dream Logistics. However, Nationwide did not follow Deli Source's instructions and did not direct Sub-Zero to deliver the shipment to Dream Logistics or any other cold-storage facility. Further, without obtaining Deli Source's approval, Nationwide and Sub-Zero agreed that Tapia should deliver the shipment to the Northern Illinois Food Bank in Geneva, Illinois, and attempt to donate it to the food bank. In count I, which was directed against Nationwide, Deli Source alleged breach of contract for Nationwide's alleged failure to follow Deli Source's instructions as to where to send the shipment after it was rejected by the customer. In count II, it raised a bailment theory against Nationwide, which is not at issue in this appeal.<sup>1</sup> In count III, directed against Sub-Zero, Deli Source alleged carrier liability under the Carmack Amendment, arguing that the shipment was damaged while in Sub-Zero's possession, where the refrigeration unit was not properly functioning and the shipment was not kept at the temperature required by the bill of lading. Alternatively, Deli Source argues that, assuming the shipment was improperly rejected by Dietz & Watson, Sub-Zero lost the shipment when it delivered it to the food bank rather than return it to Deli Source or deliver it to Dream Logistics.

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<sup>1</sup> The trial court granted Nationwide summary judgment on this count.

¶ 11 Sub-Zero denied Deli Source's allegations and raised two affirmative defenses: (1) that the internal temperature of the load was never taken by Deli Source or itself and that, according to Sub-Zero's on-board diagnostics, Deli Source loaded the load "hot" (*i.e.*, in excess of the temperature on the bill of lading); and (2) according to Sub-Zero's on-board diagnostics, the internal temperature of its trailer did not exceed the temperature range specified on the bill of lading. Sub-Zero also raised an unjust-enrichment counterclaim/countercomplaint against Deli Source, arguing that the temperature in the trailer was set at 34 degrees and did not exceed 40 degrees at the time of delivery. It further asserted that it performed all of its obligations under the parties' agreement, it was never paid the \$2,600 for delivering the cheese to New Jersey, and that the rejection of the shipment was unjustified. As a result of the rejection, Sub-Zero had to return the load to Illinois and store it for Deli Source's benefit, with the refrigeration unit running 24 hours per day, seven days per week, for four weeks, incurring additional fuel costs of about \$1,209.60.

¶ 12 Nationwide denied the allegations and took the position that it relayed to Sub-Zero the instructions to take the load to Dream Logistics. It also denied that it was aware that Sub-Zero subsequently delivered the load to the food bank.

¶ 13 At trial, Deli Source argued that the shipment was worth about \$88,000, which is what it sought from Sub-Zero. Further, it sought \$44,000, the salvage value from Nationwide. Nationwide argued that Deli Source instructed Rogan to store the load in a cold storage facility and that Deli Source would not take it back. Sub-Zero, according to Nationwide, did not inform Nationwide that it was going to attempt to donate the shipment to a food bank. Sub-Zero, in turn, argued that it did not receive the goods in good condition and that they were not damaged in transit.

¶ 14

1. Michael Perrone

¶ 15 Michael Perrone, Deli Source's majority-owner and president, testified that Deli Source packages cheese for supermarkets, including slicing large slabs of cheese and then packing, labeling, and shipping it to customers throughout the country.

¶ 16 Deli Source's facility is very small, including a holding cooler of 7,200 square feet. In 2015, the company turned over about 400,000 pounds of product per week. The cooler and production areas are refrigerated, but the dock is not. It shipped about 10 to 15 truckloads per day, including about 30,000 pounds of product per week for Dietz & Watson.

¶ 17 As to the shipment at issue, Deli Source paid Nationwide, not Sub-Zero. Perrone identified plaintiff's exhibit No. 9, as Deli Source's invoice. If it had been successfully delivered and accepted, Dietz & Watson would have paid Deli Source \$88,688. However, it was rejected and Dietz & Watson never paid for the shipment.

¶ 18 After Dietz & Watson rejected the shipment, Dave DeBoer, Deli Source's trucking manager, asked Perrone if the shipment could be sent back to Antioch, and Perrone instructed him to use Dream Logistics, a secondary refrigerated-storage facility that Deli Source used. He did not want the shipment returned to Antioch because of lack of space and the risk that it could be commingled with other product in Deli Source's warehouse. DeBoer passed along the message that the shipment could not be returned to Antioch.

¶ 19 Perrone further testified that the problem with the shipment going to the food bank was that it had Dietz & Watson's label on it and Dietz & Watson would be unaware where their product went. If the shipment had gone to Dream Logistics, it could have been sold for trim in the block cheese/barrel cheese market. (Barrel refers to processed cheeses and the block market as natural cheeses.) On the barrel market, end pieces are sold and then reheated and pasteurized

and made into sauces for macaroni and cheese and other products. For the shipment at issue, Deli Source could have sold the cheese, which totaled about 28,000 pounds, for \$1.57 per pound (*i.e.*, \$43,960).

¶ 20 On cross-examination, Perrone testified that George Baumgarten and DeBoer were plant management department heads in 2015. Deli Source's loading dock is not refrigerated. Deli Source did not offer to pay to transport back the shipment from New Jersey to Dream Logistics or to pay storage charges there.

¶ 21 2. Thomas Knight

¶ 22 Thomas Knight,<sup>2</sup> Dietz & Watson's warehouse supervisor at the Vineland New Jersey facility testified that his responsibilities were shipping and receiving. Dietz & Watson's warehouse was refrigerated, and the temperature was kept between 28 and 30 degrees. When a refrigerated truck docked at the warehouse, a seal was made between the truck and the warehouse by black cushion barriers that precluded any air getting in or out. Generally, when a truck arrived at the warehouse, a receiver would go out and check the temperature recording on the unit while outside and then a Dietz & Watson employee would back in the trailer. Using a laser gun, an employee would again take the trailer's internal temperature, which would ordinarily be ½ to 1 degree off from the temperature taken while outside. If the temperature was acceptable, the shipment was unloaded. If the temperature was over 34 degrees, then a thermometer was placed in the product itself.

¶ 23 As to the shipment at issue, Knight had only vague memories of checking the temperatures. Generally, he explained, when there are issues, the receivers contact Knight and he takes photos with his mobile phone. In this case, Knight identified his handwriting on the bill

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<sup>2</sup> Knight's testimony came in via an evidence deposition that was read into the record.

of lading. He wrote, “Load refused. Temperature in trailer 43 degrees when opened up. Tom Knight, 6/10/15.” Knight explained that the product was unloaded so that several temperature readings could be taken. Turning to the photographs, Knight stated that he did not “recall exactly taking the” photos, “but I always take the pictures \*\*\* and it looks like the building that we [were] in in Vineland.” He identified one photograph that he took that depicted a thermometer in a box that had a reading of 46.6 degrees. He tried to take readings of the product itself and the inside of the box. Another photograph depicted the thermometer inside the cheese and recording a temperature of 45.4 degrees. The load was rejected as not in compliance with the bill of lading. Knight instructed the receivers to re-load the boxes into the trailer and inform the driver that the load was rejected.

¶ 24 On cross-examination, Knight testified that he did not have a specific recollection of going outside and reading the temperature setting on the Thermo King unit after it was reported. Nor did he personally take the infrared thermometer reading of the trailer’s internal temperature. A receiver took it by shooting an infrared thermometer toward the back of the trailer. Knight was then alerted by the receivers about their readings. His note on the bill of lading is based upon what the receivers told him.

¶ 25 Knight further testified that the ambient (*i.e.*, outside) temperature could affect the temperature reading of the inside of the trailer, but would not affect the product temperature. The time that elapsed between the back of the trailer being opened and the trailer making a seal with the refrigerated warehouse was about two to three minutes.

¶ 26 3. George Baumgarten

¶ 27 George Baumgarten, Deli Source’s plant production manager and quality and food safety manager, testified that Deli Source’s refrigerated warehouse temperature was kept between 34

and 38 degrees and checked by an automatic monitoring system. He identified an exhibit that was a printout of the temperature on June 8, 2015. It stated that the warehouse temperature was 36 degrees.

¶ 28 Baumgarten described the pickup and loading process. Trucks that are to be loaded are backed into Deli Source's dock. A seal is created between the trailer and the warehouse by rubber bumpers along the sides and top of the trailer. Warehouse personnel check the driver's credentials, conduct a visual inspection of the truck to ensure it is clean and sanitary, and monitor the trailer's internal temperature to ensure it is the proper temperature. They look for readings under 40 degrees before they start loading the truck. It takes about 30 to 40 minutes to load a truck. All product loaded onto trailers comes directly from the refrigerated warehouse. Deli Source makes sure the temperature of the truck is maintained while it is being loaded.

¶ 29 A driver is required to review the bill of lading and sign it before he or she can leave Deli Source's facility. They are allowed to enter Deli Source's warehouse and inspect the shipment as it is being loaded. Baumgarten had no reason to believe that the foregoing procedures were not carried out on June 8, 2015.

¶ 30 On the day at issue, 15 shipments were loaded and shipped from the Deli Source Antioch warehouse. Only the Dietz & Watson shipment was rejected by the recipient as being above the required temperature.

¶ 31 On cross-examination, Baumgarten testified that there is an area within Deli Source's warehouse where non-conforming or rejected goods could be quarantined. It can house about two pallets and measures 10 feet wide by 4 feet deep and is 5 feet high. (The Dietz & Watson shipment consisted of 41 pallets.) If he had to, he could designate other areas. Baumgarten was not involved in the decision not to accept back the rejected shipment. To his knowledge, the

decision was made based upon space limitations and a desire to keep the rejected load segregated. The quarantine process would ensure that no one could confuse a particular shipment with another one. If other space was available, other areas could be used for quarantine, and industry standards require that labeling or other steps be taken to ensure that quarantined cheese is not inadvertently used.

¶ 32 He explained that storage cooler number one is about 8,000 square feet and storage cooler number two is about the same size. They range between 34 to 38 degrees. The cheese processing area is kept between 45 and 50 degrees.

¶ 33 On cross-examination by Sub-Zero's counsel, Baumgarten testified that there are documents that recorded the temperature of Deli Source's processing area for the date at issue. Over objection, Sub-Zero's counsel responded to the court that there was no motion to compel. Baumgarten did not have any documentation with him at trial to show the temperature of the processing area on June 8, 2015. He stated that employees ordinarily check the temperature of the Thermo King temperature gauge and records are kept of those readings, but Baumgarten did not have any such records with him concerning the shipment at issue.

¶ 34 On June 8, 2015, Baumgarten was not present when the load was loaded, he did not see the temperature being taken of the trailer, and he did not observe if anyone checked the unit temperature on the Thermo King gauge. His testimony was of Deli Source's *general* operations and procedures. Baumgarten testified that it is *not* standard protocol to take the temperature of the cheese as it is loaded, because it is maintained under 40 degrees at all times throughout processing and during storage.

¶ 35

4. David DeBoer

¶ 36 David DeBoer, Deli Source's trucking manager, testified that he sets up trucking for inbound and outbound freight and communicates with trucking companies. In 2015, he was also the dock manager, helping load the trucks and run the warehouse. That year, about two or three truck loads came in per day and two or three were shipped out per day. Deli Source did not have its own fleet of trucks. DeBoer hired various trucking companies.

¶ 37 Deli Source hired Nationwide to broker shipping of its products. DeBoer communicated with Rogan at Nationwide. He informed Rogan that all of Deli Source's products were refrigerated and to be kept between 35 and 38 degrees. There was no written contract with Nationwide. DeBoer never dealt directly with the carrier and did not directly pay the carrier.

¶ 38 DeBoer identified plaintiff's exhibit No. 10 (a Deli Source "Trucking Information Form" specified Deli Source's contact information, along with Dietz & Watson's delivery address and the number of pallets, cases, etc.) as documentation showing that Nationwide was hired in June 2015 to supervise the transportation of product to Dietz & Watson's New Jersey warehouse. The pickup date on the form was specified as June 6, but it was actually picked up on June 8. DeBoer could not recall the reason for the change in pickup date. Nationwide selected Sub-Zero.

¶ 39 Once Dietz & Watson rejected the shipment, DeBoer was in email communication with Rogan. He identified a series of emails between himself and Rogan on June 10, and June 11, 2015. (Plaintiff's exhibit No. 3). In the emails, DeBoer and Rogan agreed that the shipment should be put in a cold-storage facility "until we could figure it out."

¶ 40 DeBoer testified that he did not agree for the shipment to be sent back to Dream Logistics, because, "We didn't do anything wrong, I hired them to deliver my load to New Jersey, I am not going to pay them to bring it back again." Ultimately, Sub-Zero agreed to backhaul the load from New Jersey for no charge. Rogan asked if the shipment could be

returned to Deli Source, and DeBoer responded that a good place to call was Dream Logistics and that he had stored product there in the past. Rogan did not state in the emails that Nationwide had no responsibility to manage the rejected load. Further, Rogan never informed DeBoer that the shipment was going to Sub-Zero's facility in Park City (near Waukegan).

¶ 41 On cross-examination, DeBoer testified that a refrigerated truck kept at 35 degrees would be an appropriate place to store the rejected goods for two or three days. DeBoer does not consider a Sub-Zero truck a proper storage facility because there is only one unit, which could go out. At some point, DeBoer turned over the issue to Perrone. DeBoer did not have authority to accept the returned shipment or authorize payment for the backhaul. After Rogan asked if the shipment could be returned to Deli Source's facility, DeBoer spoke to Perrone, who instructed that Nationwide should take it to Dream Logistics. DeBoer informed Rogan of this. It was a *suggestion*, not an instruction. He *assumed* Rogan had the shipment transported to Dream Logistics. Rogan never told him that the shipment was not going to Dream Logistics. Nor did he inform DeBoer that the shipment was going to be stored in the Sub-Zero truck in the Waukegan yard or donated to the food bank.

¶ 42 DeBoer could not recall if he had any direct involvement with the shipment at issue. Deli Source documents the temperature setting of a truck's refrigeration unit, the truck's internal temperature, and the product (one pallet at a time). He did not bring these records to trial.

¶ 43 Cheese, he explained, sits on the loading dock for 30 seconds before it gets put into the trailer. The infrared gun is pointed at the top of the boxes.

¶ 44 5. Jorge Tapia

¶ 45 Jorge Tapia, the Sub-Zero driver, testified as an adverse witness. Upon reaching Deli Source's Antioch facility, he did not leave the cab of his truck or inspect the boxes of product

prior to them being loaded onto his truck. However, he signed the bill of lading and thereby acknowledged that he received the shipment in good order.

¶ 46 When Tapia arrived at Dietz & Watson, he backed in his truck to the loading dock and waited. He felt pallets being unloaded from his truck. At some point, someone from Dietz & Watson informed Tapia that the shipment was being rejected and gave him a copy of the bill of lading. Tapia asked to enter the facility to see what was going on, but Dietz & Watson personnel informed him that he was not allowed to enter.

¶ 47 Tapia immediately called his dispatcher, who told him to take the truck to a nearby Thermo King dealership so that the refrigeration unit could be diagnosed and tested. (The refrigeration unit (the reefer) on Tapia's truck was manufactured by Thermo King.) Afterwards, Tapia drove back to the Waukegan area and parked the truck, with the reefer running, at Sub-Zero's facility in Park City.

¶ 48 On cross-examination, Tapia explained how the Thermo King unit works and how he monitors it during trips. A green light signifies that the unit is properly functioning and a flashing orange light indicates there is a problem. The light is mounted on the outside of the trailer, and the driver can see it in the driver's-side mirror. He testified that on his trip from Antioch to New Jersey and back, the unit appeared to be correctly functioning. Before he picked up the shipment in Antioch, he set the unit to 34 degrees and the unit reached that temperature.

¶ 49 When he arrived in New Jersey, the ambient temperature was in the 80s. Dietz & Watson employees broke the seal on the trailer, and Tapia drove ½ mile to the loading dock, which took "no more than two minutes." After he backed into the loading dock, he felt the truck bouncing, which meant that forklifts had entered the trailer and the load was being unloaded. It took 20 to 30 minutes to unload the shipment. There was a 15-to-20-minute period when nothing

happened, and, then, another 20 minutes when nothing happened with the load. Tapia peeked into the warehouse and saw the pallets being re-loaded. After about 10 minutes, Tapia was notified that the load was rejected. The green light on the reefer was still on at this time.

¶ 50 Tapia further testified that he drove two miles away to the Thermo King dealership, where a diagnostic test was conducted on the reefer unit. Afterwards, Tapia returned to Park City.

¶ 51 6. Andy Bacłowski

¶ 52 Andy Bacłowski, Sub-Zero's vice president, testified as an adverse witness. He stated that Sub-Zero transports goods via leased refrigerated trucks using Thermo King refrigeration units. Bacłowski identified the Master Agreement that formed the contractual relationship between Sub-Zero and Nationwide. (The agreement was admitted into evidence.)

¶ 53 Prior to the June 2015 incident, Sub-Zero had made the same run several times and was paid by Nationwide, not the shipper.

¶ 54 After the Deli Source shipment was rejected, Bacłowski was the point person for communication between Sub-Zero and Nationwide. A series of emails between Rogan and Bacłowski between June 10, and June 12, 2015, was admitted into evidence.

¶ 55 Bacłowski testified that, based on the diagnostic testing, he did not believe that the cheese was above the correct temperature. He wanted to backhaul the load to Deli Source's Antioch facility, but Rogan informed him that Deli Source would not take it back. Rogan also informed Bacłowski that Deli Source wanted the load brought to Dream Logistics in Wisconsin. Bacłowski testified that, after Rogan notified him of Dream Logistics' rates, he did not contact Dream Logistics because the rates were too expensive. (*E.g.*, 41 pallets at \$5.50 per pallet, plus \$.275 per pallet for storage every 15 days. Thus, the first 15 days would cost \$350.) Bacłowski

was also concerned that, if he transported the load to Dream Logistics, “then that would be my load which is on my trailer” and “[i]f they keep [it] for a month or over a month, I had to cover everything.” According to Bacłowski, Nationwide informed him that he had to pay all of the charges at Dream Logistics. Thus, because Deli Source would not take back the shipment and because he did not want to pay the storage cost at Dream Logistics, Bacłowski had the truck taken back to his facility at Park City. The Park City facility is not a warehouse, but a yard with parking spaces for 20 or 30 trucks. Bacłowski informed Rogan that the truck was going to Sub-Zero’s lot in Park City.

¶ 56 The cheese remained on the truck with the reefer unit running for four weeks. It was not tested, and no one came to inquire about it. During the four-week period in Park City, no diagnostic tests were run on the unit. After four weeks, Bacłowski determined that he could no longer keep the cheese and he had it transported to the Northern Illinois Food Bank, which is across the street from his facility. He could not recall if he informed Rogan that he was going to donate the cheese. “I just gave them enough time for everybody to do something with the cheese, and nobody called me.” Bacłowski is unaware whether or not the food bank distributed the cheese. He informed the food bank of the history of the shipment.

¶ 57 On cross-examination, Bacłowski testified that he never had issues with the trailer either before or after the incident in June 2015. Deli Source never offered to pay the storage costs at Dream Logistics, and it never paid Sub-Zero the \$2,600 to take the freight to New Jersey. Nor did it offer to pay to backhaul the load to Illinois. Nationwide, in turn, never paid Sub-Zero the \$2,600 fee to haul the load.

¶ 58 Addressing the storage period at Park City, Bacłowski testified that about 15 gallons of diesel fuel are used to run a trailer for 24 hours. Diesel cost about \$2.88 per gallon in June 2015.

No one reimbursed Sub-Zero for the fuel charges after the shipment was brought back to Park City. The unit was out of production for one month, and there were other jobs on which it could have been used. Baclowski checked the temperature daily during the four-week period and checked for error codes. There were no error codes during the period. His opinion was that Deli Source had abandoned the load. He received no instructions from anyone as to what to do with the load, and no one contacted him about the salvage value of the load after it was rejected.

¶ 59

#### 7. John Rogan

¶ 60 John Rogan, a Nationwide salesperson, testified as an adverse witness that he reports to Nationwide's president. Nationwide holds itself out as an experienced industry leader in the logistics industry. Nationwide provides services to shippers such as Deli Source. Rogan solicited Deli Source's business.

¶ 61 Rogan identified an information sheet by which Deli Source told Nationwide of the shipment at issue and retained Nationwide's services (plaintiff's exhibit No. 10). He first learned that there was a problem with the shipment on the morning of June 10, 2015. DeBoer brought it to Rogan's attention, and the two exchanged emails between June 10 and June 12, while Rogan was having parallel communications with Baclowski at Sub-Zero.

¶ 62 On June 10, Rogan received photographs taken by Dietz & Watson, but wanted more information concerning the rejection, because Sub-Zero informed him that there was nothing wrong with its equipment.

¶ 63 Rogan suggested to DeBoer that the shipment either be returned to Deli Source or be taken to a cold-storage warehouse. DeBoer agreed that the shipment be put in a cold storage facility. Rogan asked him for a recommendation, and DeBoer, on June 11, suggested Dream

Logistics in Belgium, Wisconsin. He asked Sub-Zero for a quote to backhaul the cheese. Subsequently, Sub-Zero agreed to backhaul the shipment at no charge.

¶ 64 Rogan had additional conversations with Deli Source (via email and/or phone), and Deli Source informed him that the shipment could not be returned to Antioch. “[T]hey wanted nothing to do with it” and gave no reason. DeBoer suggested Dream Logistics and provided a phone number and contact there. Rogan thanked DeBoer. This was the last email communication (on June 11 at 3:17 p.m.) he had with Deli Source regarding the shipment.

¶ 65 Rogan contacted Dream Logistics. It quoted \$5.50 per pallet (for 41 pallets) in and out. There would be an additional \$225 charge for bringing it in and taking it out, plus \$2.74 per pallet for every 15 days. On June 12, he informed Sub-Zero that Deli Source refused to accept the load. Rogan communicated the quote to Bacłowski at Sub-Zero; Bacłowski never responded that the price was not acceptable.

¶ 66 Nationwide itself never offered to pay the charges at Dream Logistics for the first 15 days. Rogan stated, “I was pushing for it to go [*sic*] cold storage.” Rogan understood on June 12 that, at least for the short run, the product was going to Park City to be kept in the trailer.

¶ 67 After June 12, Bacłowski, not Rogan, communicated with Nationwide’s owner. “That is not really my responsibility, I addressed the insurance companies. I wanted somebody to go out, I have no idea what to do until the adjusters get involved until there is a claim. I had them fill out a form.”

¶ 68 On cross-examination, Rogan testified that he spoke to Perrone on June 11 on the phone. “I was trying to get people on board to mitigate the loss and try to give them some of my experience in the business, but I was basically told [by Perrone/the owner of Deli Source] this is your load, this is your cheese, I am not taking it back and I will fight you in Court, I will sue you,

good luck.” After this conversation, Rogan sent claim forms to the parties, which was the next step in the process.

¶ 69 Neither Deli Source, nor Sub-Zero, ever suggested that Nationwide pay for the backhaul. A broker under the circumstances in this case is not expected to pay a backhaul charge.

¶ 70 The last information that Rogan had about the shipment was that it was being kept on the refrigerated truck in Sub-Zero’s lot and that the parties had filed claims concerning the load. Deli Source did not contact him to ask where the shipment was located in order to inspect it. He never heard from Deli Source.

¶ 71 In one of his emails to DeBoer, Rogan asked, “ ‘Anytime I have placed a claim, the product always goes to the shipper, any reason why we can’t bring this back?’ ” DeBoer replied that “Eric” (an employee responsible for handling claims) would take care of it. Deli Source never explained why it could not take back the shipment.

¶ 72 Deli Source had one requirement for the shipment, specifically, that it be chilled between 30 and 38 degrees. Rogan testified that there was never any *new* agreement between Nationwide and Deli Source for the load to be brought to Dream Logistics.

¶ 73 8. Nationwide’s Motion for Directed Finding

¶ 74 At the end of Deli Source’s case, Nationwide moved for a directed finding, arguing that there was no evidence of a breach of contract between Deli Source and Nationwide because the option to store the shipment at Dream Logistics was merely a suggestion, not an instruction. Thus, it argued, there was no evidence that it did not inform Sub-Zero of Deli Source’s recommendation to take the load to Dream Logistics and that the evidence was actually to the contrary, where Rogan passed on the suggestion to Sub-Zero. Deli Source responded that Rogan failed in his attempt to get the goods to a safe location and the option of Dream Logistics was not

merely a *suggestion*, but was a *direction*. Deli Source further argued that it was Nationwide's responsibility to handle the load from beginning to end, *i.e.*, a safe conclusion.

¶ 75 The trial court denied Nationwide's motion, finding that Deli Source established a *prima facie* case that the parties contracted that Nationwide would procure a shipper for the cheese and did so and contracted with Sub-Zero for this purpose. It also found that the evidence showed that Deli Source directed Nationwide to transport the goods after rejection to Dream Logistics, but that this was not done. Nationwide, the court determined, had a duty to ensure that the cheese was transported and stored in a facility where it would not be damaged, but that it failed to do so.

¶ 76 Sub-Zero also moved for a directed finding, arguing that Deli Source had not complied with an alleged notice requirement under the Carmack Amendment. The trial court denied the motion, finding that Deli Source had made a *prima facie* case that, when Sub-Zero took possession of the load, it was in good condition, but when it was delivered, the temperature exceeded the required temperature. The trailer was 43 degrees and the goods were 46.6 and 48 degrees. The court further determined that Deli Source had established its case against Sub-Zero by a preponderance of the evidence.

¶ 77 9. Nationwide's Case-in-Chief

¶ 78 In its case-in-chief, Nationwide submitted an agreed stipulation that the \$2,600 fee for Nationwide's services was not paid by Deli Source. Deli Source, agreeing to the stipulation, clarified that it was not agreeing or stipulating that Nationwide actually invoiced it. The court also admitted into evidence Sub-Zero's interrogatories (defendant's exhibit No. 1).

¶ 79 In the interrogatories, Deli Source stated that it was standard practice to take the temperature of all trailers before loading its products and that it did not load its products unless the trailer temperature was 40 degrees or lower. No record existed of the measurement of the

trailer's temperature on the day in question, but the shipment would not have been loaded if the temperature requirement was not met. It further stated that the cheese's temperature was regulated while in Deli Source's refrigerated warehouse, where it was stored before being loaded on the trailer, and that the warehouse is kept between 36 and 38 degrees. "Records showing the temperature of the refrigerated warehouse on the day in question exist and will be produced." Before being loaded, a shipment is kept in the refrigerated warehouse for at least 24 hours. The warehouse is subject to continuous monitoring. "In the three[-]year period prior to the incident, [Deli Source] i[s] unaware of any time when the temperature exceeded 40 degrees Fahrenheit in the refrigerated warehouse." The processing area is kept at 50 degrees. Addressing mitigation, Deli Source stated that it instructed Rogan "that the shipment should be brought to a refrigerated facility in Wisconsin where it could be kept, inspected, and possibly used for another purpose. Rogan led [Deli Source] to believe that he passed the[s]e instructions on [to] Sub-Zero and that that load had been brought to the facility." Nationwide rested.

¶ 80

#### 10. Sub-Zero's Case-in-Chief

¶ 81 In its case-in-chief, Sub-Zero called Mark Cotts, a Thermo King certified master technician in Franksville, Wisconsin. Cotts worked for Sub-Zero for 24 years. In Thermo King units, Cotts explained, the units cool air and circulate the cool air around the product via a fan in the back. It does not suck in air from the outside. Air is cooled by the coil (which blows off refrigerant at a very low temperature), and it is discharged back into the sealed trailer.

¶ 82 Cotts identified exhibit No. SZ-3 as a diagnostic printout that he reviewed, and he explained the error entries on the printout. He identified a column labeled "return air" as measuring the temperature of the air entering the unit and, thus, the temperature of the air in the trailer. "Setpoint" referred to the set temperature, which, in the printout, was 34 degrees. He

testified that the operator/driver establishes the setpoint. The return air sensor is the air that is in the trailer that is moving into the unit. In the printout, that reading was initially 66 degrees and eventually went down below 40 degrees. The set point remained unchanged throughout the printout. The temperature did not rise above 40 degrees in the 13-page printout. Cotts opined that the unit did not malfunction and did not fail to keep the temperature under 40 degrees.

¶ 83 On cross-examination, Cotts testified that he never examined the Thermo King unit or the trailer at issue in this case and that another dealership generated the printout that he reviewed.

¶ 84 The air sensors are in the part of the trailer that is closest to the cab, *i.e.*, the front of the trailer. They measure the air temperature at the front of the trailer, and the printouts do not specify the air temperature at the rear of the trailer. There are Thermo King devices that measure air in the rear of the trailer, but the printout does not show any measuring devices at the rear of the trailer. Cotts stated that there could be a difference in the air temperature (return air) in the front of the trailer as compared to the rear. One example is leaky door seals, and another example is whether the trailer had air shoots or the type of air shoots. Cotts was unaware if the trailer had air shoots. If a trailer had no air shoots, there would be more of a difference between the air in the front of the trailer and the air in the back of the trailer.

¶ 85 11. Trial Court's Findings

¶ 86 On October 31, 2018, the trial court entered judgment in Nationwide's favor on the breach-of-contract count. It also entered judgment in Sub-Zero's favor on the Carmack Amendment count, but entered judgment in Deli Source's favor (against Sub-Zero) on Sub-Zero's unjust-enrichment counter-complaint.

¶ 87 In announcing its ruling on Deli Source's breach-of-contract claim against Nationwide, the trial court noted that Cotts' testimony was consistent with the diagnostic printouts, which

showed that there was no refrigeration system malfunctioning, although there were occasional spikes in the readings. The court also noted that it considered Tapia's testimony, who stated that the trailer temperature remained at 34 degrees during the time he transported the goods. Also, the ambient temperature was 80 degrees and that, once the trailer's seal was broken, the trailer remained open and the load was unloaded and "sat outside for some period of time and it was then reloaded again after some time. I think the testimony was about one hour." The court found incredible Knight's testimony, noting that he stated that he did not have a specific recollection of the shipment or personally take the temperature readings. The court found that, after the shipment was rejected, diagnostic tests were run on the unit and "established that the trailer and refrigeration unit was operating in a proper fashion throughout the entire period of transport." Turning to Tapia's signing of the bill of lading, the court noted that he did not inspect the load and, despite signing the bill of lading, it was not established that the "goods were damaged during transport or due to any fault of the carrier itself." The cheese, the court determined, was exposed to high temperatures "for some period of time," and the photographs were not tied to the goods in question. The trailer's refrigeration diagnostics, it further noted, were taken almost immediately after the goods were rejected.

¶ 88 The court further found that, once the initial contract between Deli Source and Nationwide for Nationwide to procure a carrier to transport the goods from Antioch to New Jersey (in exchange for \$2,600) was satisfied, there was no further obligation/contract to ensure transport of the goods to a facility where the goods would not be further damaged. Specifically, the court noted that there was no consideration to support a new contractual relationship between Nationwide and Deli Source. Rogan tried to facilitate the return of the rejected goods, but there was no answer from Deli Source. DeBoer stated in one email that it was up to "Mike" (actually,

the testimony referred to an “Eric”), but, the court found, there was no further response from Deli Source. Thus, the court determined, there was no contract or continuing duty by Nationwide to transport the goods to facility where they would not be damaged; there was no consideration; and no acceptance. The trial court further found that there was no evidence that the cheese was damaged during transport and, after it was returned to Illinois, no evidence that storing it on a refrigerated trailer in Park City damaged the cheese.

¶ 89 Sub-Zero, the court determined, was not liable on the Carmack Amendment claim, because there was no credible evidence that the goods were damaged; thus, Sub-Zero was not required to establish that it was free of negligence or any other elements under the statute.

¶ 90 Next, addressing Sub-Zero’s counterclaim for unjust enrichment, wherein Sub-Zero sought payment of the fee it was entitled to for transporting the goods to New Jersey and then for the cost of fuel while storing and refrigerating the cheese in a trailer on its premises, the court found in Deli Source’s favor, because there was no relationship between Sub-Zero and Deli Source. It also noted that there was no testimony that Deli Source was aware that the cheese was being stored in Park City. Deli Source appeals.

¶ 91 II. ANALYSIS

¶ 92 Deli Source argues that the trial court’s rulings in favor of Sub-Zero and Nationwide were against the manifest weight of the evidence.

¶ 93 Following a bench trial, a reviewing court will not substitute its judgment for that of the trial court, unless the judgment is against the manifest weight of the evidence. *First Baptist Church of Lombard v. Toll Highway Authority*, 301 Ill. App. 3d 533, 542 (1998). A decision is against the manifest weight of the evidence where it is unreasonable. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). The manifest-weight “standard affords great deference to the trial court

because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Wade v. Stewart Title Guaranty Co.*, 2017 IL App (1st) 161765, ¶ 59.

¶ 94

A. Sub-Zero

¶ 95 Deli Source argues first that the trial court's judgment in Sub-Zero's favor was against the manifest weight of the evidence, where: (1) the court misapplied the Carmack Amendment; and (2) its findings were not based on the evidence. For the following reasons, we reject Deli Source's arguments.

¶ 96

1. Application of Carmack Amendment

¶ 97 The Carmack Amendment attempted to simplify the "patchwork of regulation" surrounding the interstate transportation of goods by creating "a nationally uniform rule of carrier liability concerning interstate shipments." *REI Transport, Inc. v. C.H. Robinson Worldwide, Inc.*, 519 F.3d 693, 697 (7th Cir. 2008) (citation omitted).

"Congress ensured the national uniformity of this scheme of liability in two ways: by preempting state causes of action against carriers for damaged or lost goods; and by placing substantive limits on the rights of carriers to contract away liability. The preemptive sweep of the Carmack Amendment extends to state causes of action against carriers where goods are damaged or lost in interstate commerce. The statute limits the carrier's liability to the actual loss or injury to the property damaged en route, \*\*\* and a shipper cannot bypass these limits by filing a state suit for the damaged goods unless the claim seeks to remedy a separate and independently actionable harm. Nor can states enact laws that would give carriers a break by limiting their liability below what the

Carmack Amendment imposes.” (Citations and internal quotation marks omitted.) *Id.* at 697-98.

¶ 98 The Carmack Amendment codified the common-law rule “making a carrier liable, without proof of negligence, for all damage to the goods transported by it, subject to certain exceptions.” *Montgomery Ward & Co., Inc. v. Peter J. McBreen & Associates*, 40 Ill. App. 3d 69, 71 (1976).

“There is no burden on a shipper to prove negligence on the part of the carrier. The Carmack Amendment is a strict liability statute. When a shipper shows delivery of goods to a carrier in good condition, and non-delivery or delivery to the consignee in damaged condition, there arises a *prima facie* presumption of liability. Liability is not imposed upon carriers based on negligence. Rather liability is imposed upon carriers because, as insurers, they are required to deliver the goods entrusted to them in the same condition as received.” Wesley S. Chused, *The Evolution of Motor Carrier Liability Under the Carmack Amendment into the 21st Century*, 36 *Trans. L.J.* 177, 180 (2009).

¶ 99 “To establish a *prima facie* Carmack claim ‘a [shipper] must show (1) delivery [to a carrier] in good condition; (2) arrival [of the goods] in damaged condition; and (3) the amount of damages.’” *REI Transport*, 519 F.3d at 699 (quoting *American National Fire Insurance Co. v. Yellow Freight Systems, Inc.*, 325 F.3d 924, 929 (7th Cir. 2003)). After a shipper has made out a *prima facie* case, “the burden shifts to the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability.” *Allied Tube & Conduit Corp. v. Southern Pacific Transportation Co.*, 211 F.3d 367, 369 (7th Cir. 2000). The excepted causes are “acts of God, the public enemy, the act of the shipper [itself], public authority, or the inherent vice or nature of the goods.” *Id.* at 369-70 n.2.

¶ 100 Deli Source contends that the trial court mistakenly focused on non-dispositive issues, such as whether Tapia’s truck was correctly functioning. The truck’s functioning, it urges, is irrelevant if Deli Source established that the goods arrived at Dietz & Watson in damaged condition. Even if Sub-Zero could prove that it was not negligent, it further argues, that is not enough, because it was also required to prove that one of the excepted causes applied. Sub-Zero, according to Deli Source, never attempted to meet that burden.

¶ 101 Sub-Zero responds that, even if Deli Source established a *prima facie* case, Sub-Zero, the carrier, needed to show that it was: (1) free from negligence; and (2) the damage was due to one of the excepted causes—the act of the shipper itself—relieving it from liability. Sub-Zero asserts that it showed it was free from negligence and that the only plausible conclusion was that it was Deli Source’s act of loading the cheese “hot” that caused the damages in this case.

¶ 102 The trial court determined that Deli Source did not establish a *prima facie* case, where, it found, the goods were *not* damaged (and it further speculated that Dietz & Watson may have been responsible for any damage). Thus, in the court’s view, Sub-Zero did not have to show that it was free from negligence or that one of the excepted causes applied.

¶ 103 We conclude that the trial court did not err in applying the Carmack Amendment. The question of whether the goods arrived in damaged condition, which is an element of Deli Source’s *prima facie* case, is intertwined here with Sub-Zero’s burden (assuming Deli Source established its *prima facie* case) to show it was free from negligence and that an excepted cause applied. Specifically, Deli Source’s theory in this case was that the damage was caused by Sub-Zero’s act/omission—a malfunctioning refrigeration unit. The trial court’s findings concerning Tapia’s trailer were relevant to assessing whether the cheese was damaged when it arrived at Dietz & Watson and, if so, whether Sub-Zero met its burden.

¶ 104

2. Liability

¶ 105 Next, Deli Source asserts that the court's determination that Sub-Zero was not liable under the Carmack Amendment was against the manifest weight of the evidence. Specifically, it takes issue with the trial court's finding that the goods did not arrive at Dietz & Watson in damaged condition, its finding that the shipment sat outside while at Dietz & Watson's facility, and its finding that Knight was not credible, because he did not have a specific recollection as to the shipment or personally take the temperature readings of the cheese.

¶ 106 We conclude that the trial court's ruling was not against the manifest weight of the evidence. In determining that the cheese did not arrive in New Jersey in damaged condition (and, thereby, that Deli Source did not establish its *prima facie* case) the trial court relied on Cotts' testimony, which was based on his review the diagnostic printouts (testing that, the court noted, was done almost immediately after the rejection), that there was no evidence that the refrigeration system on Tapia's trailer had malfunctioned. It also relied on Tapia's testimony that the indicator light on the refrigeration system was consistently green, which indicated that the unit was properly functioning. There was nothing inherently incredible about Cotts' or Tapia's testimony, and, thus, the trial court reasonably relied on it to support its finding that the cheese was not damaged while en route to New Jersey.

¶ 107 Further, we do not find unreasonable the court's determination that Knight was not credible. The trial court discounted Knight's testimony based on its recollection that Knight did not himself take the temperature readings and could not recall the shipment at issue. The court also recalled that Knight could not specifically identify the photographs as part of the product that was shipped from Deli Source. It also found that the cheese sat outside at Dietz & Watson for about one hour.

¶ 108 The evidence actually showed that Knight testified that he did not take the *trailer's* temperature, but he assumed (because he had only vague recollections about the shipment) that he took the temperature of the *cheese* and the inside of the box in which the cheese was placed. Dietz & Watson's general practice, he explained, was that his receivers contacted him if there were issues with a shipment, and he took photos with his phone. Knight testified that he did not personally take the infrared thermometer reading of the *trailer's* internal temperature; his note on the bill of lading that the trailer temperature was 43 degrees was based upon what his receivers told him. However, he testified that he would have, based on general procedures, taken the temperature of the *cheese*. After the product was unloaded, he would have taken readings of the product itself and the inside of the box. He identified one photograph that he *assumed* he took that depicted a thermometer in a box that had a reading of 46.6 degrees. Another photograph depicted the thermometer inside the cheese and recording a temperature of 45.4 degrees. That photograph also shows a box with a label that lists item number 99014, an item number appearing on the bill of lading, and "Dietz & Watson." Based on this testimony, we cannot conclude that the trial court found Knight's testimony not credible and, instead, made findings consistent with the testimony from Cotts and Tapia.

¶ 109 Furthermore, as to Deli Source's claim that the trial court made an incorrect finding that the cheese sat outside at Dietz & Watson for one hour, we reject it as a misreading of the court's findings. Knight testified that the time that elapsed between the back of the trailer being opened and the trailer making a seal with the refrigerated warehouse was only two to three minutes. There was no testimony that the cheese sat outside (*i.e.*, outdoors) for one hour on a day with an ambient temperature of about 80 degrees. It is clear from that record that the trial court's finding referred to Tapia's testimony, who related that, after he backed into the Dietz & Watson loading

dock, the load sat out of the trailer on Dietz & Watson's refrigerated warehouse for about 40 to 60 minutes. Specifically, he stated that it took 20 to 30 minutes to unload the shipment, and that there were two 20-minute periods thereafter when nothing happened. After this, Tapia peeked into the warehouse and saw the pallets being re-loaded.

¶ 110 Thus, in summary, we conclude that the trial court, based on its reasonable credibility findings, did not err in finding that Deli Source did not establish its *prima facie* case and trial court's judgment in Sub-Zero's favor was not against the manifest weight of the evidence.

¶ 111 B. Nationwide

¶ 112 Next, Deli Source argues that the judgment in Nationwide's favor was against the manifest weight of the evidence, where the trial court ignored the impact of its directed finding ruling and, alternatively, where the court's finding that Nationwide owed Deli Source no post-contractual duties (because there was no consideration for a new contract) is not supported by the evidence. For the following reasons, we reject Deli Source's arguments.

¶ 113 To establish the existence of a valid contract, the plaintiff must show: (1) an offer; (2) an acceptance; and (3) consideration. *Van Der Molen v. Washington Mutual Finance, Inc.*, 359 Ill. App. 3d 813, 823 (2005). The essential elements of a breach-of-contract claim are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) resultant injury to the plaintiff. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 27.

¶ 114 1. Impact of Directed Finding Denial

¶ 115 For context, we note that section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2018)) allows a defendant to make a motion for a directed finding at the close of the plaintiff's case in a bench trial. To rule on such a motion, the trial court must engage in a two-

step analysis. *Atkins v. Robbins, Salomon & Patt, Ltd.*, 2018 IL App (1st) 161961, ¶ 53. First, it must decide whether the plaintiff has presented a *prima facie* case as a matter of law by producing some evidence on every element necessary to its cause of action. *Id.* If not, the court must grant the motion and enter judgment in the defendant's favor. *Id.* If the plaintiff has established the elements of the *prima facie* case, then the trial court must consider the credibility of witnesses, draw reasonable inferences therefrom, and generally consider the weight and quality of the evidence. *Id.* at ¶ 54. If sufficient evidence exists to establish the plaintiff's *prima facie* case, the trial court should deny the defendant's motion and continue the trial. *Id.* Where the evidence is not sufficient, the trial court should grant the motion and enter judgment in the defendant's favor. *Id.*

¶ 116 Here, the trial court denied Nationwide's motion for a directed finding. Thereafter, the evidence Nationwide presented in its case in chief was an agreed stipulation that Deli Source never paid Nationwide the \$2,600 fee for its services. Also during its case, the court admitted into evidence Sub-Zero's interrogatories, wherein Deli Source answered that no records existed of the trailer's temperature on the day it was loaded; that the cheese's temperature was regulated in the warehouse; records existed of the refrigerated warehouse's temperature on the day at issue; and that Rogan led Deli Source to believe that he passed on to Sub-Zero the instructions concerning Dream Logistics and that the load had been brought to the facility.

¶ 117 Here, Deli Source argues that Nationwide's failure to present any alleged material evidence concerning Deli Source's breach-of-contract claim prevented the trial court from abandoning its ruling on Nationwide's motion for a directed finding and ruling for Nationwide at the end of the case. Deli Source relies on *Geske v. Geske*, 343 Ill. App. 3d 881 (2003). In that case, at the close of the plaintiff's case, the trial court denied the defendant's motion for directed

finding. The defendant rested without presenting any evidence, and the trial court found for the defendant. In the first appeal, in an unpublished order, the reviewing court held that the trial court erred by entering judgment in the defendant's favor, because, when the defendant rested without offering any additional evidence (testimonial or documentary), the initial determination that the plaintiff had satisfied his required burden of proof was unchallenged. *Id.* at 883 (quoting *Geske v. Geske*, No. 1-01-2512 (2002) (unpublished order under Illinois Supreme Court Rule 23)). On remand, the trial court, citing its previous application of an incorrect standard (*i.e.*, the *Pedrick* standard), applied the correct standard (735 ILCS 5/2-1110 (West 2000)), and granted the defendant's motion for a directed finding. In the second appeal, the reviewing court affirmed the trial court's decision to re-open the motion and correct its prior ruling. *Id.* at 885.

¶ 118 Here, Deli Source argues, *Geske* instructs that, if no evidence is presented after a directed finding denial, the trial court must find in favor of the plaintiff. The *Geske* court noted that, in denying the defendant's motion for the directed finding, the trial court determined that the plaintiff had made a *prima facie* case and, thus, judgment as a matter of law in the defendant's favor was not proper. The court took into account witness credibility and the quality of the evidence and found that the plaintiff's evidence was sufficient to satisfy the burden of proof. " 'Accordingly, when the defendant rested without offering any additional evidence, the initial determination that the plaintiff had satisfied his required burden of proof was unchallenged. Therefore, we hold that the trial judge erred in finding that the plaintiff had failed to satisfy his required burden of proof and entering a judgment in the defendant's favor.' " *Id.* at 883 (quoting *Geske v. Geske*, No. 1-01-2512 (2002) (unpublished order under Illinois Supreme Court Rule 23)).

¶ 119 In *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Limited USA*, 384 Ill. App. 3d 849, 860 (2008), upon which Deli Source also relies, the reviewing court discussed *Geske* in the context of a case where the trial court entered judgment in the defendants' favor after the defendants presented *some* evidence after their motion for a directed finding was denied. In *Chicago's Pizza*, the evidence the defendants submitted consisted of their trial exhibits, most, but not all, of which were the same as the plaintiffs' exhibits. Finding *Bruss v. Klein*, 210 Ill. App. 3d 72, 78 (1991), instructive, the *Chicago's Pizza* court further noted that a ruling on a motion for a directed finding is not “ ‘a determination that [the] plaintiff's testimony was credible and that his case was thus proved, precluding a judgment for [the] defendants at the conclusion of that trial.’ ” *Chicago's Pizza*, 384 Ill. App. 3d at 861 (quoting *Bruss*, 210 Ill. App. 3d at 78 (following the denial of the defendants' motion for a directed finding, one witness testified for the defendants)). The trial court's denial of the defendants' motions, the court noted, “ ‘does not mean that the court could not rule for [the] defendants at the conclusion of trial, even based on a ground raised in the motions.’ ” *Id.* (quoting *Bruss*, 210 Ill. App. 3d at 78).

¶ 120 Deli Source argues that the evidence presented after the denial of a motion for a directed finding must be sufficient to truly challenge the factual findings made by the trial court at the time it denied the motion for a directed finding. Here, it asserts, when the trial court denied Nationwide's motion for a directed finding, it found that Deli Source presented *prima facie* evidence of a contract with Nationwide, a breach by Nationwide, and damages to Deli Source. The only post-ruling evidence that Nationwide submitted, it notes, was the stipulation and Deli Source's interrogatory answers (and Sub-Zero, in turn, submitted Cotts' testimony and the Thermo King diagnostic printout exhibit, which can be considered in our analysis). None of this evidence, it contends, was material to Deli Source's breach-of-contract claim.

¶ 121 Deli Source further contends that, when the trial court ruled in Nationwide’s favor, it did not mention any of this evidence. Instead, it determined that there was no consideration for a new contract between Deli Source and Nationwide after Dietz & Watson’s rejection of the shipment. Nationwide’s case-in-chief, it argues, contained no evidence remotely relevant to that finding. *Geske* instructs, Deli Source asserts, that the denial of a directed-finding motion has practical meaning concerning what the defendant must do in its case-in-chief. If the defendant presents evidence, but it is not meaningfully related to the elements of the plaintiff’s claim, then the defendant has not overcome the trial court’s initial findings and a verdict for the defendant, Deli Source asserts, cannot stand.

¶ 122 We reject Deli Source’s argument. This case is not like the *Geske* (nonprecedential) first appeal, where the appellate court held that judgment for the defendant was erroneously granted, because the defendant presented no evidence/challenge to the plaintiff’s case. Also, the law is not to Deli Source’s favor. In *Bruss*, this court stated:

“We do not agree with plaintiff’s argument, however, that the court’s ruling on the motion for a directed finding must be considered a determination that plaintiff’s testimony was credible and that his case was thus proved, precluding a judgment for defendants at the conclusion of the trial. \*\*\* In fact, the law states that, if a defendant’s motion is denied, the court should continue as if the motion had not been made and proceed with trial. The trial court’s ruling on a section 2-1110 motion is not a determination of liability as to either party. The fact that the trial court did not grant either of defendants’ motions does not mean that the court could not rule for defendant at the conclusion of the trial, even based on the ground raised in the motions.” (Internal citations omitted.) *Bruss*, 210 Ill. App. 3d at 78.

¶ 123 The foregoing emphasizes that the trial court's ruling on a motion for a directed finding does not determine any party's liability, which is the ultimate question following trial. It also implies that a court, at the conclusion of a trial, may *reconsider* its assessment of the evidence submitted in consideration of an issue raised on a motion for a directed finding.

¶ 124 In denying Nationwide's motion for a directed finding, the trial court found that Deli source gave "some direction" to Nationwide to transport the rejected goods to Dream Logistics and that this was not done. It further found that Nationwide had a duty to ensure the goods were transported and stored without damage and that it breached this duty, without justification. In ruling on Sub-Zero's directed-finding motion, the court found that the goods were damaged during transport. At the conclusion of trial, however, the court determined that Nationwide's contractual relationship with Deli Source terminated once the shipment reached Dietz & Watson's facility in New Jersey and that no new contractual relationship was formed thereafter to safeguard the rejected goods. It came to this determination after Nationwide and Sub-Zero presented their cases-in-chief. Nationwide presented a stipulation concerning an invoice and Deli Source's answers to Sub-Zero's interrogatories, and Sub-Zero presented Cotts' testimony concerning the diagnostic testing of the Thermo King unit. We agree with Deli Source that, during Nationwide's case-in-chief, Nationwide did not present evidence that directly addressed its post-rejection contractual relationship, if any, with Deli Source. However, we believe that the testimony from Cotts during Sub-Zero's case-in-chief, which the court found credible (and noted its consistency with Tapia's testimony that the unit remained within the designated temperature range during transport), certainly presented the case in a new light. From this evidence, the court determined, contrary to its findings on the directed-finding motions, that the cheese was *not* damaged during transport or due to Sub-Zero's fault. It reassessed witness credibility and the

weight it had previously given to Deli Source's evidence. This also triggered a reassessment of the claim against Nationwide, which was permissible.

¶ 125 We reject Deli Source's arguments concerning the impact of the direct-finding rulings.

¶ 126 2. Breach-of-Contract Theory

¶ 127 Deli Source argues next that, even if the trial court made no error concerning the impact of its directed-findings rulings, the trial court's ruling that Nationwide was not liable on the breach-of-contract theory was against the manifest weight of the evidence. For the following reasons, we disagree.

¶ 128 The trial court found that there was no new contract between Nationwide and Deli Source after Dietz & Watson rejected the shipment, and, thus, Nationwide had no post-rejection contractual duty to safeguard the shipment.

¶ 129 Deli Source argues that it never argued a new-contract theory. Rather, it argued that Nationwide's duty to safeguard the shipment, under the parties' original oral agreement, was part of the parties' contractual relationship from the beginning (although it concedes that these terms were *not* explicitly discussed between the parties when the oral contract was formed). No new consideration was necessary, in its view, because there was no new contract. Deli Source contends that Nationwide's actual behavior between July 10, and 12, 2015, supports Deli Source's position. It points to Rogan's statements that he believed that the shipment still had value and that it was his responsibility to mitigate the loss. He asked Deli Source for a recommendation for a cold storage facility and contacted Dream Logistics to obtain pricing information and shared that information with Sub-Zero. Deli Source also notes that Rogan had parallel communication with it and Sub-Zero, acting as a conduit for information and never suggested to Deli Source that it communicate directly with Sub-Zero and never told Deli Source

that Nationwide had no responsibility for the shipment. In Deli Source's view, Rogan's conduct demonstrates that he understood that Nationwide had a continuing obligation to safeguard the rejected shipment and could not simply walk away from the problem.

¶ 130 Deli Source also points to the Master Agreement between Nationwide and Sub-Zero, which provides that Nationwide had the power to determine, if branded or labeled goods were damaged, if rejected goods were salvageable and that Sub-Zero was prohibited from selling or disposing of trademarked goods without Nationwide's permission. These provisions, Deli Source argues, gave Nationwide contractual authority to control Sub-Zero's conduct after the shipment was rejected.

¶ 131 Deli Source further argues that Nationwide breached the contract and allowed the shipment to be completely lost, where it: allowed Sub-Zero to transport the cheese to its yard in Park City rather than to Dream Logistics; refused to pay for the storage costs; led Deli Source to believe that the shipment went to Dream Logistics as DeBoer requested (and where Rogan knew that it went instead to Park City and never informed Deli Source); and did nothing to monitor the cheese or exert control over the shipment once it was taken to Sub-Zero's yard and stopped communicating with Sub-Zero and allowed it to donate the shipment to the food bank. Deli Source seeks the salvage value of the shipment, which Perrone identified as \$43,856.28.

¶ 132 Nationwide responds that there was no evidence that it entered into an agreement to ensure transport of the rejected load to a cold storage facility. Once the shipment was delivered to New Jersey, Nationwide argues, its obligation under the original contract was completed. At the time of the initial agreement, there was no evidence of discussions between the parties, it contends, about rejected shipments or what Nationwide was expected to do in such a situation.

That is, there was no evidence that the parties included this as a term in their original agreement to procure a carrier to transport the goods to New Jersey.

¶ 133 We conclude that the trial court's findings were not against the manifest weight of the evidence. First, as to the original oral contract between the parties, Deli Source acknowledges that the parties never *explicitly* addressed their obligations following any rejection. Deli Source's reliance on Rogan's conduct after Dietz & Watson rejected the load, does not, we believe, show that he was acting pursuant to any *implicit* agreement, assuming this would be sufficient, between the parties concerning Nationwide's post-rejection obligations. Indeed, Deli Source does not point to *any* case law supporting its argument.

¶ 134 Second, as to any potential new contract, the trial court noted that Rogan tried to facilitate the return of the rejected cheese, but there was no answer from Deli Source. In one email, the court noted, DeBoer stated that it was up to another employee ("Eric"), but there was no further response from Deli Source. This evidence shows, in our view, that, to the extent that Rogan's conduct reflected an offer by Nationwide to ensure the safeguarding of the cheese after Dietz & Watson rejected it, Deli Source never accepted it or agreed to the terms Rogan relayed concerning Dream Logistics' fees or other storage options. Clearly, it was not unreasonable for the trial court to find that there was no new agreement between the parties.

¶ 135 The Master Agreement between Nationwide and Sub-Zero, to which Deli Source points, it not relevant to our analysis. It involves Nationwide's relationship with a company that was not a party to any agreement with Deli Source. The fact that the Master Agreement set forth any contractual authority for Nationwide to control Sub-Zero's conduct after a shipment was rejected does not also act to extend its reach to any contract between Deli Source and Nationwide to arrange to ship the cheese from Antioch to New Jersey. The provision in the Master Agreement

could have reasonably been included to protect Nationwide had it actually entered into a contract that imposed on it post-rejection obligations. It does not imply that all of Nationwide's contractual relationships necessarily impose such an obligation on it.

¶ 136 In summary, we conclude that the trial court's finding that Nationwide and Deli Source's contractual relationship terminated upon delivery of the cheese to New Jersey and that no new relationship was formed after rejection was not against the manifest weight of the evidence. Because we conclude that Nationwide had no duty to safeguard the shipment after it was rejected, we need not address Deli Source's final argument that Nationwide breached any such duty.

¶ 137

### III. CONCLUSION

¶ 138 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 139 Affirmed.